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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,631

03/19/2004

Michael J. Burns

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MBHB/TRADING TECHNOLOGIES  
300 SOUTH WACKER DRIVE  
SUITE 3200  
CHICAGO, IL 60606

EXAMINER

LEMIEUX, JESSICA

ART UNIT

PAPER NUMBER

3693

MAIL DATE

DELIVERY MODE

09/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/804,631	<b>Applicant(s)</b> BURNS ET AL.	
	<b>Examiner</b> JESSICA L. LEMIEUX	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 and 26-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-25 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Final Office action is in response to the application filed on March 19<sup>th</sup>, 2004 and in response to the applicant's arguments/amendments filed on July 22<sup>nd</sup>, 2008. Claims 1-32 are pending and claims 1-16 and 26-31 have been cancelled.

#### ***Response to Arguments***

2. Applicant's arguments, with respect to 35 U.S.C. 112 second paragraph rejections of claims 1 and 26 have been fully considered and are persuasive as the claims have been cancelled. The 35 U.S.C. 112 second paragraph rejections of claims 1 and 26 has been withdrawn in view of the claims having been cancelled.

3. Applicant's argues the prior art does not disclose "a spread used in spread trading which includes at least two tradeable objects" and " estimating a spread value between the two or more tradeable objects." Examiner respectfully disagrees. Examiner notes that although the first tradeable object may be different than the second tradeable object, alternatively, the first tradeable object and the second tradeable object may be the same. If applicant would like to further clarify, an amendment to the claim is recommended. Examiner further asserts that the prior art clearly states "the present invention estimates the cost of a trade" (abstract). Clearly, although a value can be directly computed if all values are known, when all values aren't concretely known for a direct computation it would be obvious to estimate the cost of trade in order to make better informed decisions regarding whether and what to trade. Therefore it would have been obvious to one skilled in the art at the time of invention that the prior art discloses

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"a spread used in spread trading which includes at least two tradeable objects" and "estimating a spread value between the two or more tradeable objects."

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 17-25 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent Number 7,177,833 to Marynowski et al. (hereinafter Marynowski) in view of United States Patent Number 7,110,974 to Rust (hereinafter Rust).

As per claims 17 and 32

Marynowski discloses detecting an event in a first tradeable object, wherein the first tradeable object and a second tradeable object are part of a spread for spread trading (column 9, line 7-14 & 54-67, column 10, lines 1-6 and column 17, line 48-column 18, line 3), based on the event, characterizing the first tradeable object as being bought or sold, selecting a buy side or a sell side of the second tradeable object based on whether the first tradeable object was characterized as being bought or sold (column 9, lines 22- 53 and column 17, line 48-column 18, line 3).

Marynowski does not specifically teach estimating a spread value for the spread based on a first value associated with the event in the first tradeable object and based on a second value associated with the selected buy side or sell side of the second tradeable object.

Rust teaches estimating a spread value for the spread based on a first value associated with the event in the first tradeable object and based on a second value associated with the selected buy side or sell side of the second tradeable object (Abstract; column 1, lines 5-50; column 5 line 42-column 6, line 19).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the spread trading system of Marynowski to include estimating the spread value based on a first value associated with the event in the first tradeable object and based on a second value associated with the selected buy side or sell side of

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the second tradeable object as taught by Rust to calculate the cost associated with making more informed decisions regarding whether or not to trade.

As per claim 18

Examiner notes that the combination of Marynowski and Rust teach all the claimed limitations, as discussed with respect to claim 17 above and Marynowski further discloses the first tradeable object is characterized as being bought when the last traded price of the first tradeable object is at or below a highest bid price (column 17, line 48- column 18, line 3).

As per claim 19

Examiner notes that the combination of Marynowski and Rust teach all the claimed limitations, as discussed with respect to claim 17 above and Marynowski further discloses the first tradeable object is characterized as being sold when the last traded price of the first tradeable object is at or above a lowest offer price (column 17, line 48- column 18, line 3).

As per claim 20

Examiner notes that the combination of Marynowski and Rust teach all the claimed limitations, as discussed with respect to claim 17 above and Marynowski further discloses the first tradeable object is characterized as being bought or sold based on if the last traded price of the first tradeable object is nearer to a highest bid price or a lowest offer price, respectively (column 17, line 48- column 18, line 3).

As per claim 21

Examiner notes that the combination of Marynowski and Rust teach all the claimed limitations, as discussed with respect to claim 17 above and Marynowski further discloses selecting the buy side or sell side of the second tradeable object results in characterizing the second tradeable object as being bought or sold, respectively (column 9, lines 22- 53 and column 17, line 48-column 18, line 3).

As per claim 22

Examiner notes that the combination of Marynowski and Rust teach all the claimed limitations, as discussed with respect to claim 17 above and Marynowski further discloses selecting the corresponding buy side or sell side of the second tradeable object is further based on a spread definition (Abstract and column 9, line 22- column 10, line 6).

As per claim 23

Examiner notes that the combination of Marynowski and Rust teach all the claimed limitations, as discussed with respect to claim 17 above and Marynowski further discloses the second value represents a highest bid price for the second tradeable object when the sell side is selected or a lowest offer price for the second tradeable object when the buy side is selected (column 9, line 3-36).

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As per claim 24

Examiner notes that the combination of Marynowski and Rust teach all the claimed limitations, as discussed with respect to claim 17 above and Marynowski further discloses the second value represents a midpoint between the highest bid price and the lowest ask price for the second tradeable object (column 9, line 3-36).

As per claim 25

Examiner notes that the combination of Marynowski and Rust teach all the claimed limitations, as discussed with respect to claim 17 above and Marynowski further discloses a computer readable medium having stored therein executable instructions (column 4, line 64- column 5, line 24 and column 7, lines 31-33).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA L. LEMIEUX whose telephone number is

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(571)270-3445. The examiner can normally be reached on Monday-Thursday 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A. Kramer/  
Supervisory Patent Examiner, Art Unit 3693

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Examiner  
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September 2008